

REMARKS

Claims 1-4, 6, and 11 are pending and stand rejected. Claims 1 and 11 are in independent form and stand rejected under 35 U.S.C. 103(a) as being obvious over U.S. Patent No. 6,244,021 (“Ausnit”) in view of Applicant’s alleged admitted prior art.

As an initial matter, Applicant submits that the embodiment depicted in FIGs. 1-4 of Ausnit does not disclose all of the features recited in Applicant’s claims. For example, among other things, there is no continuous web, only individual packages moving left to right. Accordingly, Applicant’s remarks focus on the embodiment depicted in FIGs. 5-11 of Ausnit.

Applicant has amended independent claims 1 and 11 to clarify that according to Applicant’s method, the lengths of fastener are located on the substrate while the lengths of fastener are transverse to the length of said substrate by first attaching a flange portion of the fastener to the substrate. Ausnit, on the other hand, discloses a method, wherein the zipper is parallel to the package (i.e. the direction in which the package is fed) when the zipper is first located. (*See e.g.* Ausnit at FIG. 7). In fact, the zipper of Ausnit must be parallel to the package in order for the seal bars to properly function. In that regard, the seal bars are provided with a cavity so that the interlocking closure elements are not crushed during the sealing procedure. In order for such seal bars to properly seal the zipper to the wall extensions, the zipper must be parallel to the package (i.e. the direction in which the package is fed). Accordingly, Ausnit does not disclose a method of sealing a reclosable fastener to a substrate, wherein the lengths of fastener are located on the substrate while the lengths of fastener are transverse to the length of said substrate by first attaching a flange portion of the fastener to the substrate.

Additionally, Applicant maintains that Ausnit does not present the lengths of the fastener to the substrate such that the lengths extend transversely to the length of the substrate, as claimed. For example, Ausnit discloses a method where a zipper is presented to a package such that the zipper extends longitudinally to the package. (*See* Ausnit at FIG. 7). The Office Action was silent on this feature, of Applicant’s claims. In that regard, a proper case for *prima facie* obviousness must include some “articulated reasoning with some rational underpinning.” *See In re Kahn*, 441 F. 3d 977, 988 (Fed. Cir. 2006) (cited with approval in

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KSR Int'l v. Teleflex Inc., 127 S. Ct. 1727, 1740-41, 82 USPQ2d 1385, 1396 (2007))

(“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”). Accordingly, not only does the Office Action fail to cite a reference that discloses a method of sealing a reclosable fastener to a substrate, wherein the lengths of fastener are presented to the substrate such that the lengths extend transversely to the length of the substrate, but it also fails to establish the obviousness of such a method.

Also, Applicant maintains that Ausnit does not disclose a fastener having a body portion that is free for movement relative to the substrate when the fastener is attached to the substrate, as claimed. Just because the seal bars 104 of Ausnit have a cavity 106, does not mean that the body part of the zipper is free to move relative to the substrate *because both of its flanges are sealed to the substrate and the body lies between the flanges*. In other words, although the body of the zipper is not sealed to the substrate in the region of the cavities 106 in the seal bars 104, the zipper has no freedom of movement relative to the substrate because it is attached to the substrate at each side of the body portion. Accordingly, Ausnit does not teach or suggest a method where the lengths of the fastener are located on the substrate by first attaching the fastener to the substrate so as to leave a body portion of the fastener free for movement relative to the substrate, as in the claims.

Because of the forgoing remarks, Applicant respectfully submits that claims 1 and 11 are in condition for allowance. Additionally, because claims 2-4, and 6 depend from claim 1, Applicant respectfully submits that claims 2-4, and 6 are also in condition for allowance. If the Examiner determines that a telephone conference would further the prosecution of this case, he is invited to telephone the undersigned at his convenience.

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